In the Supreme Court

OF THE

United States

OCTOBER TERM, 1943

No. 154

ANDERSON NATIONAL BANK, Suing on Behalf of Itself and All Others Similarly Situated,

Appellants,

vs.

H. CLYDE REEVES, Individually and as Commissioner of Revenue of the State of Kentucky, etc., et al.,

Appellees.

Appeal from the Court of Appeals of the State of Kentucky.

BRIEF ON BEHALF OF CALIFORNIA BANKERS ASSOCIATION, AMICUS CURIAE.

HERBERT W. CLARK,
ROLAND C. FOERSTER,
EDWARD HOHFELD,
Crocker Building, San Francisco, California,
Attorneys for California Bankers Association, Amicus Curiae.

MORRISON, HOHFELD, FOERSTER,
SHUMAN & CLARK,
Crocker Building, San Francisco, California,
Of Counsel.

PERNAU-WALSH PRINTING CO. SAN FRANCISCO

Subject Index

Table of Authorities Cited

Cases

Codes and Statutes

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1943

No. 154

ANDERSON NATIONAL BANK, Suing on Behalf of Itself and All Others Similarly Situated,
Appellants,

vs.

H. CLYDE REEVES, Individually and as Commissioner of Revenue of the State of Kentucky, etc., et al.,
Appellees.

Appeal from the Court of Appeals of the State of Kentucky.

BRIEF ON BEHALF OF CALIFORNIA BANKERS ASSOCIATION, AMICUS CURIAE.

STATEMENT OF REASONS FOR THIS BRIEF.

California Bankers Association is a voluntary Association, its members being all the banks, both state and national, doing business in California. This Association has a particular interest in the case at bar for

several reasons: (1) The case of *First National Bank of San Jose v. State of California,* 262 U.S. 366, involved the application of the so-called "escheat statutes" of this State to national banks; (2) the application of that decision to similar statutes is involved in this case; (3) the Attorney General of California has filed a brief in which the correctness of the decision in *First National Bank of San Jose v. State of California* is attacked; and, finally, (4) the national banks of this State believe that the Kentucky statutes involved in the instant case constitute one more attempt on the part of the states to interfere with their business.

ARGUMENT.

We do not deem it necessary to review at length the Kentucky statutes involved—they are set out at length in the briefs of the several counsel.

We hope to point out, however, that there is no sound fundamental distinction between the statutes of California construed in *First National Bank of San Jose v. State of California,* 262 U.S. 366, and the statutes of Kentucky to be construed in the case at bar, insofar as their effect upon and application to national banks is concerned.

At the time this Court decided the case of *First National Bank of San Jose v. State of California* (decided June 4th, 1923), Sections 1272 and 1273 of the Code of Civil Procedure of this State read as appears in the attached Appendix. Section 15 of

the Bank Act of this State contained similar provisions (see attached Appendix).

The first case decided by our Courts construing these statutes after they were enacted is *Mathews, Administrator, v. Savings Union Bank etc. Company*, 43 Cal. App. 45, 184 Pac. 418 (decided August 26th. 1919). This was a decision by a District Court of Appeal but a hearing was denied by the Supreme Court of California. In that case the defendant (a State bank), on January 1st, 1917, had a large sum of money on deposit to the credit of one Anderson. Anderson had died in 1892 but this fact was not known to the bank; nothing had happened in the account for more than twenty-five (25) years. As required by the several statutes of California the bank had reported the account to the State Treasurer. In March, 1917, the plaintiff Mathews, the Public Administrator of the county where Anderson resided at the time of his death, was appointed administrator of his estate; he duly qualified and immediately thereafter made demand on the bank for the deposit to the credit of Anderson. The bank refused payment and Mathews, the administrator of the Anderson estate, brought action against the bank for the amount of the deposit. The State of California intervened in the action and set up the claim that because the demand of Mathews, the administrator of the Anderson estate, was not made until after January 1st, 1917 the account had escheated to the State. The trial Court so held and gave judgment for the State. In reversing the judgment the Appellate Court said:

> "So obnoxious to the sense of justice is the suggestion that the state may take for its own use the property of one of its citizens, without compensation and without hearing, that, unless the language of a statute is express and unmistakable, courts will not attribute to the co-ordinate law-making body the purpose of invading the common right and violating those fundamental constitutional provisions by which the individual is protected against arbitrary action on the part of the government. The language of the statutes here in question requires no such interpretation."

The second case which came before our Courts involving our escheat statutes is *State of California v. Savings Union Bank etc. Company*, 186 Cal. 294, 199 Pac. 26 (decided June 20th, 1921). This is a companion case to *Mathews v. Savings Union Bank etc. Company, supra.* While the case of *Mathews v. Savings Union Bank etc. Company* was pending (the State of California having intervened and set up its claim) the State brought a separate action against the defendant bank in the Superior Court of Sacramento County under the authority of these statutes to obtain a judgment declaring that the deposit to the credit of Anderson had escheated to the State. The trial Court gave judgment for the State and the bank appealed. The Court said:

> "The precise claim of the state is that the declaration in section 1273 that the money which has remained on deposit twenty years under the conditions therein stated 'shall, with the increase and proceeds thereof, escheat to the state,' accomplishes an instantaneous escheat; that the only

purpose of the action therein provided for is to obtain an adjudication that the escheat had already occurred and an order for the transfer of the money from the bank to the state treasurer; that it is really for the protection of the bank against other claims to the money and is not in any sense for the benefit of the person who made the deposit or those claiming under him, and that neither the original owner nor his heirs, assigns, or personal representatives may claim the money by virtue of a demand made after the twenty years had run. The sole questions presented are whether or not the statutes so provide, and, if they do, whether or not they are invalid for the reason that in that event they provide for the taking of property without due process of law."

And, further, the Court said:

"In view of these rules of construction, and of the fact that the statute would be utterly void if given the meaning attributed to it by the attorney-general, we are of the opinion that the provision of section 1273 that bank deposits unclaimed for twenty years, as there stated, shall escheat to the state, must not be taken as intending to provide for an immediate escheat, but as providing that the same shall be taken over by the state as an escheat when so adjudged in the action so provided for. This is the effect of the decision in *Estate of Miner,* 143 Cal. 194 (76 Pac. 968), although in that case this particular statute was not considered, that case having been decided before its enactment. For these reasons, in addition to those given by the district court of appeal, we think the court erred in holding that the property had escheated to the state."

The Supreme Court therefore reversed the judgment of the trial Court.

The third case involving these statutes and decided by our Supreme Court is *State of California v. Security Savings Bank,* 186 Cal. 419, 199 Pac. 791 (decided July 5th, 1921), and affirmed by this Court in *Security Savings Bank v. State of California,* 263 U.S. 282, on November 19th, 1923. In this case the State of California brought an action against the bank (a State bank) under the provisions of the statutes of California (Sections 1272 and 1273, Code of Civil Procedure) to declare an escheat of certain deposits in the bank which had been unclaimed for twenty (20) years, and recovered judgment. The bank urged certain constitutional objections to the statutes which were overruled by the Supreme Court of this State and by the Supreme Court of the United States. In affirming the judgment, however, the Supreme Court of California said:

> "Section 1272 of the Code of Civil Procedure allows 'any person not a party or privy' to 'any proceeding had under this title' to petition the court at any time within five years after final judgment in such proceeding for another judgment directing that the property declared in the previous judgment to have escheated to the state be delivered to him, or if it is money, that the amount be paid to him by the state, and be declared to be his own. The title referred to is title VIII, the subhead of which is 'Escheated Estates,' and it includes section 1272 and 1273. Although the language of section 1273, literally interpreted, would bar all persons whatever from

afterward claiming the property adjudged to have escheated, section 1272 indicates that it was not intended to be final except as to persons who were 'parties or privies' to the proceeding. As the process provided for in the proceeding under section 1273 purports to run to all the world, it may be difficult to give effect to the phrase 'party or privy,' as used in section 1272, unless it is confined to persons who appeared in the proceeding and those claiming under such persons. If it has this meaning, the judgment under section 1273 does not finally bar the depositors or others interested who did not appear, but merely sets the five-year period running against them. As we remarked at the outset, no persons appeared or appealed except the bank, and the rights of other persons cannot be adjudicated on this appeal. Consequently we express no opinion upon the question just stated. We mention it only to forestall the inference that we have decided it by implication."

What did the Supreme Court of this State mean by this statement? Simply this: Under Section 1272 of the Code of Civil Procedure any "person not a party or privy" to "any proceeding under this title" (the Code of Civil Procedure is divided into titles and Sections 1272 and 1273 are under the title of "Escheated Estates") may petition the Court at any time within five (5) years after final judgment in the escheat proceedings for another judgment directing that the property escheated to the State in the prior judgment be restored to him. The language of Section 1273 Code of Civil Procedure, literally inter-

preted, would bar *all persons* whatever from afterward claiming the escheated property, but Section 1272 indicates that the judgment was not intended to be final except as to persons who were "parties or privies" to the proceedings. Since the process under Section 1273 runs to all the world, it may be difficult to give effect to the phrase "party or privy" as used in Section 1272 unless "party or privy" means only those persons *named* and who *appeared* in the original proceedings and those claiming under them. If that is what is meant by the phrase "party or privy" as used in Section 1272, then the judgment under Section 1273 (the escheat judgment) does not finally bar the depositors and others interested who did not *appear* in the escheat proceedings, although *named* as parties therein, but only starts the five-year period. But, says the Court, no depositor appeared in the escheat proceedings (only the defendant bank), so no rights are adjudicated except the bank's rights. The rights of other defendants—the depositors whose deposits are taken over to the State by the judgment of escheat—are not determined. Our Supreme Court did not determine the final rights of those persons *named* in the escheat proceedings but who did not *appear* and defend their rights. The Court was speaking only about the rights of those depositors named in the escheat proceedings who did not appear and defend and whether they could ultimately recover from the State.

The fourth—and last—case passing upon these escheat statutes which came before the Supreme Court of California prior to the decision by this Court in

First National Bank of San Jose v. State of California is *State of California v. Anglo & London Paris National Bank of San Francisco, First National Bank of San Jose et al.*, 186 Cal. 746, 200 Pac. 612 (decided August 29th, 1921). This was an action by the State against several national banks doing business in California to recover certain deposits which had remained unclaimed in the several defendant banks for more than twenty (20) years. It will be observed that the Supreme Court of California had under consideration at the same time the case involving state banks and the case involving national banks. The State recovered judgment against the national banks involved. The Supreme Court of this State affirmed the judgment of the trial court in favor of the State against the national banks and this was the judgment reversed by the Supreme Court of the United States in *First National Bank of San Jose v. State of California*, 262 U.S. 366 (decided June 4th, 1923). We observe at this point that the case involving the national banks reached this Court and was decided (June 4th, 1923) before the case involving the state banks was decided by this Court (*Security Savings Bank v. State of California*, 263 U.S. 282, decided on November 19th, 1923). The Supreme Court of California, in affirming the judgment of the trial court against the national banks (*State of California v. Anglo & London Paris National Bank*) said:

> "We deem it proper to repeat the statement at the conclusion of our decision in *State v. Security Sav. Bank, ante*, p. 419, 199 Pac. 791, that we ex-

press no opinion upon the question whether the judgment of the superior court herein operates as a present escheat of the rights of the several depositors against the respective banks, or whether under section 1272 they each still have the right within the time there stated to prosecute an action to obtain payment of their several deposits from the state treasurer, and to say that if they have such right the judgment of the superior court would not be a bar thereto."

When the case of *First National Bank of San Jose v. California,* 262 U.S. 366, was before this Court the Court had before it the following decisions of the California Courts:

Mathews v. Savings Union Bank etc. Company, 43 Cal. App. 45, 184 Pac. 418;

State of California v. Savings Union Bank etc. Company, 186 Cal. 294, 199 Pac. 26;

State of California v. Security Savings Bank, 186 Cal. 419, 199 Pac. 791;

State of California v. Anglo & London Paris National Bank of San Francisco, et al., 186 Cal. 746, 200 Pac. 612.

With these decisions before this Court the Court said, in *First National Bank of San Jose v. State of California,* that the Supreme Court of California had not determined whether the judgment of the superior court operated as a present escheat of the rights of the several depositors against the respective banks or whether, under Section 1272 of the Code of Civil Procedure, the depositors still had the right within the

time there stated (five (5) years after the judgment) to prosecute an action to obtain payment of their several deposits from the State Treasurer, and that if they had such right the judgment of the court was not a bar thereto. The exact language of this Court on this point is as follows:

> "The Supreme Court declined to express an 'opinion upon the question whether the judgment of the superior court herein operates as a present escheat of the rights of the several depositors against the respective banks, or whether under section 1272 they each still have the right within the time there stated to prosecute an action to obtain payment of their several deposits from the state treasurer,' and said, 'if they have such right the judgment of the superior court would not be a bar thereto'."

What does this mean, in plain terms? Simply this: We do not know at this time and the California courts have not said whether the judgment in and of itself operates as an escheat, or whether the depositors (those named as defendants in the action) whose accounts have been taken over by the State may still pursue their right against the State Treasurer, if they did not *appear* in the action although *named* therein. That this is exactly what this Court meant is made clear by the following language of this Court in the case of *Security Savings Bank v. State of California*, 263 U.S. 282 (decided November 19th, 1923), at page 290:

"In the opinion below it was suggested that the statute may be construed as permitting a depositor, although named as defendant in the attorney general's suit, to make claim as against the State, under Section 1272, at any time within the five years (or the extended period) after final judgment, if he did not appear in the suit. As no depositor had appeared, the point was not passed upon; and the state court expressly left open the rights of depositors and their privies in respect to escheat. *State v. Security Savings Bank*, 186 Cal. 419, 431. We have no occasion to consider them."

This Court said (not in plain terms but necessarily following from the decision) that it did not make any difference what the California courts would eventually say on this point; it did not make any particular difference whether the depositors whose rights were affected by the judgment have or have not the right to recover their money from the State Treasurer within a certain period; under the statutes of California the State was given the right to "dissolve contracts of depositors in national banks" and that cannot be done by a State. What may happen after that time, and whether a depositor in a national bank, who was named in the proceedings to take over his deposit but who did not *appear* and *defend*, can later get his money back made no particular difference. There can be no question—and it was admitted—that the effect of the judgment was to take the money out of the national banks and turn it over to the State; the

"contracts of deposit were dissolved"; that, the Supreme Court of the United States said, could not be done, and struck down the statutes so far as national banks were concerned.

Had it been necessary for this Court, in order to reach a decision in *First National Bank of San Jose v. State of California,* to determine the rights of depositors to recover their money from the State Treasurer it would have done so, since the interpretation and effect of the laws of the United States was involved.

See

Larson v. South Dakota, etc., 278 U.S. 429;
Appleby v. New York, 271 U.S. 364.

But this Court plainly said, in the *First National Bank of San Jose* case, that irrespective of whether the depositors who were *named* as defendants in the escheat proceedings but who did not *appear* therein may or may not recover their money from the State, the fact is that the judgment of the court operating under the California statutes dissolves the contracts of deposit between the national bank and the depositors and requires the national bank to pay over the deposits to the State. That, says this Court, we will not permit.

We turn now to the decision of the Court of Appeals of Kentucky in *Anderson National Bank v. Reeves,* 293 Ky. 735, 170 S. W. (2d) 350. The Court said in that case that the decision in *First National*

Bank of San Jose v. State of California, 262 U. S. 366, did not apply, because:

> "* * * in discussing the case, the Supreme Court treated the California statutes as statutes of escheat or confiscation and held them void as being a regulation of national banks to such an extent as to tend to frustrate the purposes and objects of national legislation with respect to such banks. * * * Thus it seems that the California statutes were held invalid as to national banks because they were deemed by the court to be *escheat* statutes confiscating the deposits solely by reason of *dormancy*. The comment of the court on the failure of the California court to express an opinion on the right of the depositor to secure a return of the deposit is significant. Thus, while this case unquestionably decided that the California statutes were invalid as to national banks, and while this decision was reaffirmed as to the particular California statutes in the later case of Security Sav. Bank v. California, supra, we do not feel that it is controlling as to the act in controversy since the Act differs from the California statutes in that no escheat is declared by reason of mere dormancy—the Act is one pursuant to which mere custody, as distinguished from title, is vested in the state by reason of dormancy and is not one of confiscation having the tendency to cause depositors to hesitate to make deposits in national banks. And, since the confiscatory feature, which the Supreme Court had in mind as being the feature of the California statutes which tended to bring about an undue interference with national banks, is absent from

the present Act, it does not appear to us that the case is controlling of the question now presented.

* * * * * * *

"Since the act in controversy does not provide for an escheat of deposits by reason of mere dormancy, as did the California statutes (title being vested in the state only after judicial determination of *actual* abandonment), and since the depositor may at any time before actual abandonment is adjudged (and five years thereafter if he was not served with actual notice) secure a return of his deposit from the state, it is our opinion that the Act has no tendency to cause depositors to hesitate on account of apprehended fear of confiscation to make deposits in national banks. This being true, there is no unwarranted interference with such banks and no frustration of the purposes of national legislation concerning them such as to render the Act invalid as to them."

We urge that this is not a correct analysis of the holding of this Court in the *First National Bank of San Jose* case. This Court never said in the *First National Bank of San Jose* case that the California statutes were confiscatory; this Court never treated the California statutes in that case as confiscatory; this Court never had in mind in deciding the *First National Bank of San Jose* case that the California statutes were confiscatory. As we have heretofore pointed out in this brief, all this Court ever said on this point in the *First National Bank of San Jose* case was that the particular circumstances under which the depositor may recover his money from the State after

the State took the money, and the conditions under which he may recover it had not been determined by the Supreme Court of California, and that this Court did not determine that question. This Court, in the *First National Bank of San Jose* case, found that the California escheat statutes dissolved the contracts of deposit between a national bank and its depositors and that such dissolution was void. If the Kentucky statutes do not do the very same thing—if they do not dissolve the contracts of deposit between a national bank and its depositors—then they do nothing. Certainly under the Kentucky statutes the State takes over deposits from national banks; certainly it dissolves the contracts of deposit which this Court said, in the *First National Bank of San Jose* case, could not be done. It is of no consequence whether the depositors may recover these accounts from the State of Kentucky; it was of no consequence in the *First National Bank of San Jose* case. Under the Kentucky statutes perhaps the depositor may recover his money from the State; under the California statutes perhaps the depositor may recover his money from the State; that makes no difference. This Court held, in the *First National Bank of San Jose* case, that the California statutes constituted an unlawful interference with the business of national banks and, likewise, the Kentucky statutes constitute an unlawful interference with the business of national banks. The distinction which the Court of Appeals of Kentucky makes between the California statutes and the Kentucky statutes is a "distinction without a difference".

The Attorney General of California in his brief argues that *First National Bank of San Jose v. State of California* should be "reviewed" and reversed; and a considerable portion of his brief is to the effect that the decision in that case is incorrect. We point out that this case has been cited with approval and affirmed by this Court in numerous later decisions.

See:

Security Savings Bank v. State of California, 263 U. S. 282 (at p. 284);

First National Bank v. State of Missouri, 263 U. S. 640 (at p. 664);

National City Bank v. Philippine Islands, 302 U. S. 651;

Colorado National Bank of Denver v. Bedford, 310 U. S. 41 (at p. 50).

It has also been followed by many State and Federal Courts.

In the brief of the Attorney General of California he argues that a receiver of a corporation appointed by a state court may withdraw moneys of the corporation on deposit in a national bank and that such withdrawal does not interfere with the governmental functions of the bank. Certainly this may be done, because the receiver succeeds to all the rights of the corporation of which he is appointed receiver and he is entitled to all its assets. The corporation-depositor had the right to withdraw moneys from its account and the receiver succeeds to all the rights of the depositor. An executor or administrator of a deceased

depositor appointed by a state court may likewise withdraw the moneys on deposit to the credit of a deceased depositor in a national bank for the same reason.

The Attorney General further argues that a sheriff armed with a garnishment issued by a state court may garnish the moneys of a depositor in a national bank and that such an act is not interfering with the bank's governmental functions. Here, again, the sheriff is doing exactly what the depositor could do; the sheriff, in such a case, "stands in the shoes" of the depositor and exercises his rights. It has been held that a garnishment does not interfere with the functions of a national bank.

Earle v. Pennsylvania, 178 U. S. 449;

Earle v. Conway, 178 U. S. 456.

The same rule applies to other agencies of the Federal government.

Federal Housing Administrator v. Burr, 309 U. S. 242.

The National Banking Act contains a provision similar to that of the Federal Housing Administration Act permitting a national bank "to sue and be sued" (U. S. Code, Title 12, Section 24), but property belonging to a national bank may not be attached by process in a state court (U. S. Code, Title 12, Section 91).

CONCLUSION.

We respectfully submit that the case of *First National Bank of San Jose v. State of California* is controlling in the case at bar and that the judgment of the Kentucky Court of Appeals should be reversed.

Dated, San Francisco,
January 12, 1944.

HERBERT W. CLARK,
ROLAND C. FOERSTER,
EDWARD HOHFELD,
Attorneys for California Bankers Association, Amicus Curiae.

MORRISON, HOHFELD, FOERSTER,
SHUMAN & CLARK,
Of Counsel.

(Appendix Follows.)

Appendix

Section 1272 Code of Civil Procedure.

Claim to escheated property: Limitation: Petition, filing and what must be shown: Service, answer and trial of issues: Judgment: Failure to appear, etc., within time limit, effect. Within five years after judgment in any proceeding had under this title, a person not a party or privy to such proceeding may file a petition in the superior court of the county of Sacramento, showing his claim or right to the property, or the proceeds thereof.

What petition must show. Said petition shall be verified, and, among other things must state:

The full name, and the place and date of birth of the decedent whose estate, or any part thereof, is claimed.

The full name of such decedent's father and the maiden name of his mother, the places and dates of their respective births, the place and date of their marriage, the full names of all children and the issue of such marriage, with the date of birth of each, and the place and date of death of all children of such marriage who have died unmarried and without issue.

Whether or not such decedent was ever married, and if so, where, when and to whom.

How, when and where such marriage, if any, was dissolved.

Whether or not said decedent was ever remarried, and, if so, where, when and to whom.

The full names, and the dates and places of birth of all lineal descendants, if any, of said decedent; the dates and places of death of any thereof who died prior to the filing of such petition; and the places of residence of all who are then surviving, with the degree of relationship of each of such survivors to said decedent.

Whether any of the brothers or sisters of such decedent ever married, and, if so, where, when and whom.

The full names, and the places and dates of birth of all children the issue of the marriage of any such brother or sister of decedent, and the date and place of death of all deceased nephews and nieces of said decedent.

Whether or not said decedent, if of foreign birth, ever became a naturalized citizen of the United States, and if so, when, where, and by what court citizenship was conferred.

The post-office names of the cities, towns or other places, each in its appropriate connection, wherein are preserved the records of the births, marriages and deaths hereinbefore enumerated, and, if known, the title of the public official or other person having custody of such records.

If for any reason, the petitioner is unable to set forth any of the matters or things hereinabove re-

quired, he shall clearly state such reason in his petition.

Service: Answer. A copy of such petition must be served on the attorney general at least twenty days before the hearing of the petition, who must answer the same.

Trial of issues: Judgment. And the court thereupon must try the issue as issues are tried in civil actions, and if it is determined that such person is entitled to the property, or the proceeds thereof, it must order the property, if it has not been sold, to be delivered to him, or if it has been sold and the proceeds paid into the state treasury, then it must order the controller to draw his warrant on the treasury for the payment of the same, but without interest or cost to the state, a copy of which order, under the seal of the court, shall be a sufficient voucher for drawing such warrant.

Failure to appear etc., within time limit, effect. All persons who fail to appear and file their petitions within the time limited are forever barred; saving, however, to infants, and persons of unsound mind, the right to appear and file their petitions at any time within the time limited, or within one year after their respective disabilities cease.

Statutes of California 1915, Chapter 555, page 934.

Section 1273, Code of Civil Procedure.

Unclaimed bank deposits: Escheat to state: Action by attorney-general: Service of process: Trial and judgment. All amounts of money heretofore or hereafter deposited with any bank to the credit of depositors who have not made a deposit on said account or withdrawn any part thereof or the interest, and which shall have remained unclaimed for more than twenty years after the date of such deposit, or withdrawal of any part of principal or interest, and where neither the depositor nor any claimant has filed any notice with such bank showing his or her present residence, shall, with the increase and proceeds thereof, escheat to the state.

Action commenced. Whenever the attorney-general shall be informed of such deposits, he shall commence an action or actions in the name of the State of California, in the superior court for the county of Sacramento, in which shall be joined as parties the bank or banks in which the moneys are deposited and the names of all such depositors. All or any number of depositors or banks may be included in one action.

Service of process. Service of process in such action or actions shall be made by delivery of a copy of the complaint and summons to the president, cashier or managing officer of each defendant bank, and by publication of a copy of such summons in a newspaper of general circulation published in said county for a period of four weeks.

Upon the trial the court must hear all parties who have appeared therein and if it be determined that the moneys deposited in any defendant bank or banks are unclaimed as hereinabove stated, then the court must render judgment in favor of the state declaring that said moneys have escheated to the state and commanding said bank or banks to forthwith deposit all such moneys with the state treasurer, to be received, invested, accounted for and paid out in the same manner and by the same officers as is provided in the case of other escheated property.

Statutes of California 1915, Chapter 84, page 107.

Section 15, Bank Act.

Sec. 15. All amounts of money heretofore or hereafter deposited with any bank to the credit of depositors who have not made a deposit on said account or withdrawn any part thereof or the interest and which shall have remained unclaimed for more than twenty years after the date of such deposit, or withdrawal of any part of principal or interest, and where neither the depositor or any claimant has filed any notice with such bank showing his or her present residence, shall, with the increase and proceeds thereof, be deposited with the state treasurer after judgment in the manner provided in the Code of Civil Procedure. At the time of issuing the summons in the action provided for in section 1273 of the Code of Civil Procedure, the clerk shall also issue a notice

signed by him giving the title and number of said action, and referring to the complaint therein, and directed to all persons, other than those named as defendants therein, claiming any interest in any deposit mentioned in said complaint, and requiring them to appear within sixty days after the first publication of such summons, and show cause, if any they have, why the moneys involved in said action should not be deposited with the state treasurer as in said section provided, and notifying them that if they do not so appear and show cause, the state will apply to the court for the relief demanded in the complaint. A copy of said notice shall be attached to and published with the copy of said summons required to be published by said section, and at the end of the copy of such notice so published there shall be a statement of the date of the first publication of said summons and notice. Any person interested may appear in said action and become a party thereto. Upon the completion of the publication of the summons and notice, and the service of the summons on the defendant bank, or banks, as in said section 1273 of the Code of Civil Procedure provided, the court shall have full and complete jurisdiction over the state, and the said deposits and of the person of everyone having or claiming any interest in the said deposits, or any of them, and shall have full and complete jurisdiction to hear and determine the issues therein, and render the appropriate judgment thereon. The president or managing officer of every bank must, within fifteen days after the first day of January of every year,

return to the superintendent of banks and to the state controller a sworn statement showing the names of depositors known to be dead, or who have not made further deposits, or withdrawn any moneys during the preceding twenty years. Such statement shall show in detail the following matters, viz.:

First—The name and last known place of residence or post office address of the person making such deposit;

Second—The amount and date of such deposit and whether the same are in moneys or securities, and if the latter, the nature of the same;

Third—The interest due on such deposit, if any, and the amount thereof;

Fourth—The sum total of such deposit, together with the interest added thereto due from such bank on account of such deposit or deposits and the interest thereon to such depositor, but nothing contained herein shall require any corporation or person renting lock boxes or safes in vaults for storage purposes to open or report concerning property stored therein. Such reports itemized as aforesaid shall be signed by the person making the same and shall be sworn to before a person competent to administer oaths as a full, complete and truthful statement of each of the items therein contained.

The president or managing officer of every bank must, within fifteen days after the first day of January of every odd numbered year, return to the super-

intendent of banks a sworn statement showing the names of depositors known to be dead, or who have not made further deposits, or withdrawn any moneys during the preceding ten years. Such statements shall show the amount of the account, the depositor's last known place of residence or post office address, and the fact of death, if known to such president or managing officer. Such president or managing officer must give notice of these deposits in one or more newspapers published in or nearest to the town or city where such bank has its principal place of business, at least once a week for four consecutive weeks, the cost of such publication to be paid pro rata out of such unclaimed deposits. This section does not apply to any deposit made by or in the name of a person known to the president or managing officer to be living. The superintendent of banks must incorporate in his subsequent report such returns made to him as provided in this section. If any president or managing officer of any bank neglects or refuses to make the sworn statements required by this section such bank shall forfeit to the State of California the sum of one hundred dollars a day for each day such default shall continue. Any president or managing officer of any bank who violates any of the provisions of this section shall forfeit to the State of California the sum of one hundred dollars a day for each and every day such violation shall continue. For the purposes of this section all deposits received by any bank under the provision of section thirty-one or section thirty-one *a* of this act shall be deemed to have been

deposited with such bank at the time the deposit was made with the bank from which the deposit was transferred; *provided,* that any bank which shall make any deposit with the state treasurer in conformity with the provisions of this section shall not thereafter be liable to any person for the same and any action which may be brought by any person against any bank for moneys so deposited with the state treasurer shall be defended by the attorney general without cost to such bank.

Statutes of California 1915, Chapter 608, page 1106.

SUPREME COURT OF THE UNITED STATES.

No. 154.—October Term, 1943.

Anderson National Bank, Suing on Behalf of Itself and All Others Similarly Situated, Appellants, *vs.* J. E. Luckett, Individually and as Commissioner of Revenue of the State of Kentucky, etc., et al.	Appeal from the Court of Appeals of the State of Kentucky.

[February 28, 1944.]

Mr. Chief Justice Stone delivered the opinion of the Court.

Under Kentucky Revised Statutes of 1942, ch. 393, §§ 393.060 *et seq.*, every bank or trust company in the state is required to turn over to the state, deposits which have remained inactive and unclaimed for specified periods. The questions for decision are: (1) whether the statute under which the state purports to acquire the right to demand custody of the deposits, affords due process of law, even though the depositors may not receive personal notice of the pending transfer and there may be no prior judicial proceedings, and (2) whether the statute, as applied to deposits in a national bank, conflicts with the national banking laws or is an unconstitutional interference by the state with appellant's operations as a banking instrumentality of the United States.

So far as here relevant, the provisions of the statute may be summarily stated as follows. Demand deposits held by a bank, with accrued interest, are presumed abandoned unless the owner has, within ten years preceding the date for making the report required by § 393.110, negotiated in writing with the bank, or been credited with interest on his passbook at his request, or had a transaction noted upon the books of the bank, or increased or decreased the amount of his deposit (§ 393.060). Non-demand deposits, with accrued interest, are likewise presumed abandoned, unless the owner, within the twenty-five years preceding the report, has taken one or more of such enumerated actions (§ 393.070).

The holder of property presumed abandoned, including any national bank, is required to file with the state Department of Reve-

nue, annually before September 1, a report in duplicate of such property as of the preceding July 1; the copy is sent to the sheriff of the county in which the property is located, and he is under the statutory duty of posting the copy on the court house door or bulletin board, before the following October 1 (§ 393.110(1)). The holder is required to turn over to the Department of Revenue before November 15, the property so reported, unless the holder or owner certifies facts to rebut the presumption of abandonment, or unless the statute of limitations has run as between the owner and the holder. In neither such case need the holder turn over the property except upon an order of court. If a claimant has filed an action with respect to any such property, the holder is required to notify the Department of the pendency of the action but is not required to turn over the property during its pendency. (§ 393.110(2).) In any case the holder of such property is entitled to a judicial determination of his rights, under § 393.160, providing for appeals from the decisions of the Commissioner of Revenue, or under § 393.230, providing for an equitable action by the Commissioner to compel the surrender of such property (§ 393.110(3)).

A person refusing to turn over property under this statute is subject to a penalty of 10% of its amount, but not to exceed $500; he is subject to no penalty, however, if he posts a compliance bond (§ 393.290). Any person who transfers property to the State under this statute is relieved of liability to the owner, and the State is required to reimburse the holder for any such liability (§ 393.130).

The Commissioner may institute judicial proceedings to establish conclusively that property, in his hands because presumed abandoned, is actually abandoned, or that the owner of the property has died and that there is no person entitled to it (§ 393.230(2)). In such an action the procedure is governed by the Kentucky Civil Code of Practice (§ 393.240(2)).

A claim to property surrendered to the state may be made at any time, unless the property has been judicially determined, under § 393.230, to have been actually abandoned, in which case any claim to the property by a person not actually served with notice and who did not appear and whose claim was not considered during the proceeding, must be made within five years of the judicial determination (§ 393.140(1) and (2); and see *Anderson Nat. Bank* v. *Reeves*, 293 Ky. 735, 738, 741). The claimant is required to make publication of his claim in a newspaper of general

circulation in the county, or if there is none, he is required to post his claim at the court house door and at three other conspicuous places in the county (§ 393.140(3)). The Commissioner of Revenue is directed to consider and determine the validity of any claim and any defense; if he approves the claim, he must authorize its payment (§393.150). Judicial review of his determination in the appropriate state courts is provided (§ 393.160).

The statute thus sets up a comprehensive scheme for the administration of abandoned bank deposits. Upon a report by the bank and notice to the depositors and with an opportunity to be heard, if either wish it, the state takes into its protective custody bank accounts which, having been inactive for at least ten years if demand accounts, or at least twenty-five years if non-demand, the statute declares to be presumptively abandoned. The bank is relieved of its liability to the depositors, who receive instead a claim against the state, enforcible at any time until the deposits are judicially found to be abandoned in fact and for five years thereafter. Refusal by the designated state officer to make payment is reviewable by the state courts.

Appellant, a national banking association organized under the laws of the United States, brought the present suit in the Circuit Court of Kentucky for Franklin County. The bill of complaint, filed by appellant on behalf of itself and all others similarly situated, sought to enjoin appellees, the state Commissioner of Revenue and other state officers, from enforcing the statute here in question. The Circuit Court held invalid so much of the challenged statute as requires the payment of deposits to the state merely on the prescribed notice, and without the order or judgment of a court of competent jurisdiction. It gave judgment perpetually enjoining appellees from enforcing such parts of the statute. The Kentucky Court of Appeals sustained the Act in its entirety, holding that it affords due process, and that it neither infringes the national banking laws nor is a prohibited interference with a banking instrumentality of the United States. It accordingly reversed the judgment of the Circuit Court, and instructed it to deny an injunction. 293 Ky. 735. On remand, the Circuit Court entered its judgment, dismissing the bill. The Court of Appeals affirmed. 294 Ky. 674. The case comes here on appeal under § 237(a) of the Judicial Code, 28 U. S. C. § 344(a).

Appellant contends here: (1) that the statute, in requiring payment of the deposit accounts to the state on the prescribed notice, without recourse to judicial proceedings or any court order or judgment, deprives the depositors and appellant of property without due process of law, and (2) that such withdrawal of accounts from a national bank infringes the national banking laws, particularly R. S. § 5136, 12 U. S. C. § 24, which authorize national banks to accept deposits and to do a banking business, and is an unconstitutional interference with the federally authorized function of national banks as instrumentalities of the Federal Government.

I.

Appellant argues that the statute deprives both the bank and the depositors of their property rights in the bank accounts, and contends that the procedure by which the state acquires its asserted right to demand payment of the accounts is so lacking in notice to depositors and in an opportunity for them to be heard as to deny the state the right to assert the depositors' claims and afford to the bank no protection if it responds to the state's demand for payment of the accounts.

While the Kentucky statute is entitled "Escheats", its provisions, so far as applicable to bank deposits, are concerned only with personal property deemed abandoned. At common law, abandoned personal property was not the subject of escheat, but was subject only to the right of appropriation by the sovereign as *bona vacantia*. See 7 Holdsworth, A History of English Law (2d ed.) 495-496. Like rights of appropriation, except so far as limited by state law and the Fourteenth Amendment, exist in the several states of the United States. *Hamilton* v. *Brown*, 161 U. S. 256; *Christianson* v. *King County*, 239 U. S. 356; *Security Bank* v. *California*, 263 U. S. 282; *United States* v. *Klein*, 303 U. S. 276.

Apart from questions which may arise under the national banking laws in the case of national banks, it is no longer open to doubt that a state, by a procedure satisfying constitutional requirements, may compel surrender to it of deposit balances, when there is substantial ground for belief that they have been abandoned or forgotten, *Security Bank* v. *California*, *supra*, certainly when the state acquires them subject to all lawful demands of the depositors. *Provident Savings Institution* v. *Malone*, 221 U. S. 660.

The deposits are debtor obligations of the bank, incurred and to be performed in the state where the bank is located, and hence

are subject to the state's dominion. See *Security Bank* v. *California, supra,* 285 and cases cited; *Irving Trust Co.* v. *Day,* 314 U. S. 556, 562. And it is within the constitutional power of the state to protect the interests of depositors from the risks which attend long neglected accounts, by taking them into custody when they have been inactive so long as to be presumptively abandoned, see *Provident Savings Institution* v. *Malone, supra,* 664, just as it may provide for the administration of the property of a missing person. *Cunnius* v. *Reading School District,* 198 U. S. 458; *Blinn* v. *Nelson,* 222 U. S. 1.

With respect to the statutory rebuttable presumption of abandonment of demand deposits after inactivity of ten years and of non-demand deposits after inactivity of twenty-five years, we are unable to say that the legislative determination is without support in experience. We have sustained like statutory presumptions that shorter periods of inactivity furnish the basis for state administration of unasserted claims or demands. See *Security Bank* v. *California, supra*; *Cunnius* v. *Reading School District, supra*; *Blinn* v. *Nelson, supra*; cf. *Provident Savings Institution* v. *Malone, supra.*

In the present posture of the case we conclude, subject to the requirements of procedural due process, that prior to a judicial decree of actual abandonment, the depositors will not be deprived of their property by the surrender of their bank accounts to the state. We need not decide whether the procedure for determining abandonment in fact conforms to due process, for appellant has not attacked this procedure here and no such proceeding is before us. Prior to such a decree the present statute merely compels the summary substitution of the state for the bank, as the debtor of the depositors. It deprives the depositors of none of their rights as creditors, preserving their right to demand from the state payment of the deposits, and their right to resort to the courts if payment is refused. True, payment over of the deposits to the state may be the precursor of a decree of abandonment and the shortening of the period within which a claimant may demand payment of his deposit. But, if the notice to depositors is adequate, we cannot say that the period of five years allowed for that purpose after the decree, is an infringement of constitutional rights. *Terry* v. *Anderson,* 95 U. S. 628, 632-633, and cases cited; *United States* v. *Morena,* 245 U. S. 392, 397.

Appellant and the Comptroller of the Currency, as *amicus curiae*, point to the formalities with which the depositors must comply before they will be able to recover their deposits, and argue that the state *may* be less solvent or less willing to pay than the bank. In the absence of some persuasive showing, which is lacking here, that these formalities will be more onerous than those which would or could be properly required by the bank, or that the state *will* in fact be less able or less willing to pay, it cannot be assumed that the mere substitution of the state as the debtor will deprive the depositors of their property, or impose on them an unconstitutional burden. See *Dohany* v. *Rogers*, 281 U. S. 362, 366-368; cf. *Blinn* v. *Nelson*, *supra*, 7; *Corn Exchange Bank* v. *Commissioner*, 280 U. S. 218, 223. In the absence of a showing of injury, actual or threatened, there can be no constitutional argument. *In re 620 Church St. Corp.*, 299 U. S. 24, 27, and cases cited.

Since the bank is a debtor to its depositors, it can interpose no due process or contract clause objection to payment of the claimed deposits to the state, if the state is lawfully entitled to demand payment, for in that case payment of the debt to the state, under the statute, relieves the bank of its liability to the depositors. *Security Bank* v. *California*, *supra*, 285, 286. But if the statute is deficient in its provisions for notice and opportunity for hearing so that the depositors would not be bound by any proceedings taken under it, the bank would be entitled to raise the question whether its obligation to the depositors would be discharged by payment of the deposits to the state. Hence our inquiry must be directed to the question whether the procedure by which the state undertakes to acquire the depositors' right to demand payment of the deposits was upon adequate notice to them and opportunity for them to be heard.

As we have said, the statute provides for notice to the depositors by requiring the sheriff to post on the court house door or bulletin board a copy of the bank's report of deposits presumed abandoned. We think that this, in conjunction with the notice provided by the statute itself and by the taking of possession of the bank balances by the state, is sufficient notice to the depositors to satisfy all requirements of due process.

The statute itself is notice to all depositors of banks within the state, of the conditions on which the balances of inactive accounts

will be deemed presumptively abandoned, and their surrender to the state compelled. All persons having property located within a state and subject to its dominion must take note of its statutes affecting the control or disposition of such property and of the procedure which they set up for those purposes. *Reetz* v. *Michigan*, 188 U. S. 505, 509; *North Laramie Land Co.* v. *Hoffman*, 268 U. S. 276, 283. Proceedings for the assessment of taxes, the condemnation of land, the establishment of highways and public improvements affecting land owners, are familiar examples. *Huling* v. *Kaw Valley Railway & Improvement Co.*, 130 U. S. 559, 563-564; *Ballard* v. *Hunter*, 204 U. S. 241, 254-257, 262.

The report of the bank, required to be posted on the court house door or bulletin board, lists the abandoned accounts as defined by the statute and thus gives notice to the owners of all those accounts which, because of their inactivity for the periods and in the ways specified by the statute, are deemed abandoned and required to be paid to the state. This notice, when read in the light of the knowledge of the statute, with which all persons having such bank accounts within the state are chargeable, is sufficient to advise that the listed accounts are deemed presumptively abandoned and will at the end of six weeks from the date of filing be paid over to the state, and that both before and after that event the depositors will be afforded opportunity to present their claims and to have them judicially determined, if rejected.

Posting on the court house door as a method of giving notice of proceedings affecting property within the county, is an ancient one and is time-honored in Kentucky. The Act of the Kentucky legislature of December 19, 1796, provided in § 2 for the use of this method of warning absent defendants in equity proceedings that a decree would be entered against them, if they did not appear. This means of giving notice was employed in the escheat statutes of Kentucky at least as early as 1852. Kentucky Revised Statutes of 1852, p. 308, c. 34, Art. IV, § 3(1). The fact that a procedure is so old as to have become customary and well known in the community is of great weight in determining whether it conforms to due process, for "Not lightly vacated is the verdict of quiescent years". *Coler* v. *Corn Exchange Bank*, 250 N. Y. 136, 141, aff'd, *sub nom. Corn Exchange Bank* v. *Commissioner*, *supra*. To that effect, see *Otis Co.* v. *Ludlow Mfg. Co.*, 201 U. S. 140, 154;

Ownbey v. *Morgan*, 256 U. S. 94, 108-109, 112; *Jackman* v. *Rosenbaum Co.*, 260 U. S. 22, 31; *Corn Exchange Bank* v. *Commissioner*, *supra*, 222-223; *Snyder* v. *Massachusetts*, 291 U. S. 97, 110-111.

We cannot say that the posting of a notice on the door of the court house in a Kentucky county is a less efficacious method of giving notice to depositors in banks of the county than publication in a local newspaper, or that in the circumstances of this case it is an inadequate means of giving notice of the summary taking into custody of the designated bank accounts by the state. This is the more so because in this case the notice is the immediate prelude to and accompanies the compulsory surrender of the bank balances to the state, unless the depositors in the meantime intervene as claimants. The statutory procedure, so far as it affects depositors, is in the nature of a proceeding in rem, in the course of which property, against which a claim is asserted, is seized or sequestered, and held subject to the appearance and presentation of claims by all those who assert an adverse interest in it. In all such proceedings the seizure of the property is in itself a form of notice of the claim asserted, to those who may claim an interest in the property. See *Corn Exchange Bank* v. *Commissioner*, *supra*, holding constitutional a statute providing for no notice to the owner of a bank deposit other than its seizure.

Security Bank v. *California*, *supra*, was a proceeding to compel the bank to pay over to the state inactive bank accounts as the first step in their sequestration and, if unclaimed, their possible ultimate escheat. The Court held, 263 U. S. at 289-290, that publication of notice of the proceeding in a newspaper at the state capital was sufficient notice to absent depositors to meet due process requirements. It supported this conclusion by reference to the proceeding against the bank by which it was required to pay over the deposits to the state "as *in personam* so far as concerns the bank; as *quasi in rem* so far as concerns the depositors", 263 U. S. at p. 287. Since the service of process on the bank personally was equivalent to a seizure of the accounts, it was deemed to supplement the publication as an independent notice, in itself, to the depositors of the seizure and of their opportunity given by the statute to appear and assert their claims against the state.

Like procedure, begun by the seizure or acquisition of control of a res, including, in some cases, choses in actions, has been sustained as affording adequate notice to absent claimants in escheat

proceedings, *Hamilton* v. *Brown, supra*; *Christianson* v. *King County, supra,* 373; in garnishment proceedings, *Harris* v. *Balk,* 198 U. S. 215, 223; in proceedings for the administration of a debt due an absentee, *Cunnius* v. *Reading School District, supra*; in proceedings begun by attachment, *Cooper* v. *Reynolds,* 10 Wall. 308; and in admiralty proceedings, *The Mary,* 9 Cranch 126, 144.

We cannot say, nor does appellant seriously urge, that the length of notice by posting, six weeks, is inadequate. Three weeks notice by publication of the condemnation of the land for a public highway was held sufficient by this Court in *North Laramie Land Co.* v. *Hoffman, supra;* and thirty days was deemed sufficient in a like proceeding in *Huling* v. *Kaw Valley Railway & Improvement Co., supra.*

What is due process in a procedure affecting property interests must be determined by taking into account the purposes of the procedure and its effect upon the rights asserted and all other circumstances which may render the proceeding appropriate to the nature of the case. *Davidson* v. *New Orleans,* 96 U. S. 97, 107-108; *Ballard* v. *Hunter, supra,* 255; *North Laramie Land Co.* v. *Hoffman, supra,* 282-283; *Dohany* v. *Rogers, supra,* 369, and cases cited. The fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked. If that is preserved, the demands of due process are fulfilled. Measured by this standard, we cannot say that the present notice is insufficient.

For this reason also it is not an indispensable requirement of due process that every procedure affecting the ownership or disposition of property be exclusively by judicial proceeding. Statutory proceedings affecting property rights, which, by later resort to the courts, secure to adverse parties an opportunity to be heard, suitable to the occasion, do not deny due process. Familiar examples are the decisions and orders of administrative agencies which determine rights subject to a subsequent judicial review. And such is obviously the case here, where there is full opportunity to the depositors to be heard by the State Commissioner, whose decision is subject to court review. It is difficult to see what right here asserted would have been better preserved by a court procedure whose end was the compulsory surrender of the deposit balances by the bank to the state, which takes subject to the claims of the depositors.

The mere fact that the state or its authorities acquire possession or control of property as a preliminary step to the judicial determination of asserted rights in the property is not a denial of due process. *Samuels* v. *McCurdy*, 267 U. S. 188, 200; *North Laramie Land Co.* v. *Hoffman, supra*; *Corn Exchange Bank* v. *Commissioner, supra*; *Phillips* v. *Commissioner*, 283 U. S. 589, 593-601, and cases cited.

We conclude that the procedural provisions of the Kentucky statute are adequate to meet all constitutional requirements, and that it does not deprive appellant or its depositors of property without due process of law.

II

We come now to appellant's second contention, that the Kentucky statute infringes the national banking laws and unconstitutionally interferes with appellant as an instrumentality of the federal government. But the statute does not discriminate against national banks, cf. *McCulloch* v. *Maryland*, 4 Wheat. 316, by directing payment to the state by state and national banks alike, of presumptively abandoned accounts. Nor do we find any word in the national banking laws which expressly or by implication conflicts with the provisions of the Kentucky statutes. Cf. *Davis* v. *Elmira Savings Bank*, 161 U. S. 275.

This Court has often pointed out that national banks are subject to state laws, unless those laws infringe the national banking laws or impose an undue burden on the performance of the banks' functions. *Waite* v. *Dowley*, 94 U. S. 527, 533; *First National Bank* v. *Missouri*, 263 U. S. 640, 656; *Lewis* v. *Fidelity Co.*, 292 U. S. 559, 566; *Jennings* v. *United States Fid. & G. Co.*, 294 U. S. 216, 219. Thus the mere fact that the depositor's account is in a national bank does not render it immune to attachment by the creditors of the depositor, as authorized by state law. Compare *Earle* v. *Pennsylvania*, 178 U. S. 449, with *Van Reed* v. *People's National Bank*, 198 U. S. 554.

As we have seen, a bank account is a chose in action of the depositor against the bank, which the latter is obligated to pay in accordance with the terms of the deposit. It is a part of the mass of property within the state whose transfer and devolution is subject to state control. *Security Bank* v. *California, supra*, 285, 286, and cases cited; *Irving Trust Co.* v. *Day, supra*, 562

It has never been suggested that non-discriminatory laws of this type are so burdensome as to be inapplicable to the accounts of depositors in national banks.

The statute here attacked does not purport to do more than does any other regulation of the devolution of bank accounts of missing persons, a function which is, as we have seen, within the competence of the state. Under the statute the state merely acquires the right to demand payment of the accounts in the place of the depositors. Upon payment of the deposits to the state, the bank's obligation is discharged. Something more than this is required to render the statute obnoxious to the federal banking laws. For an inseparable incident of a national bank's privilege of receiving deposits is its obligation to pay them to the persons entitled to demand payment according to the law of the state where it does business. A demand for payment of an account by one entitled to make the demand does not infringe or interfere with any authorized function of the bank. In fact, inability to comply with such demands is made a basis in the national banking laws for closing the doors of the bank and winding up its affairs.

Appellant argues that if the present act is sustained, it will open the door to the exertion of unlimited state discretionary power over the deposits in national banks, and that the act imposes a burden on appellants such as was held to be inadmissible in *First National Bank* v. *California*, 262 U. S. 366, which was followed in *National City Bank* v. *Philippine Islands*, 302 U. S. 651. As we have seen, the only power sought to be exerted by the state over the depositors' accounts is the assertion of its lawfully acquired right to collect them, in accordance with the obligation which was both assumed by appellant and is to be performed in conformity with the banking laws of the United States. In this respect the state's power to make such a demand cannot extend beyond its power under state law and the Federal Constitution to acquire control of deposit accounts from their owners. So long as it is thus limited, and the power is exercised only to demand payment of the accounts in the same way and to the same extent that the depositors could, we can perceive no danger of unlimited control by the state over the operations of national banking institutions. We need not decide whether within this limit, the state's power over deposits in national banks is as simple as its like power over deposits in state banks. Compare *First National Bank* v.

California, supra, with *Security Bank* v. *California, supra*. We are concerned only with the question whether the particular power here asserted is a forbidden encroachment upon the privileges of a national bank.

The decision of this Court in *First National Bank* v. *California, supra*, did not rest on any want of power of a state to demand of a national bank, payment of deposits which the state was lawfully entitled to receive. Decision there turned rather on the effect of the state statute in altering the contracts of deposit in a manner considered so unusual and so harsh in its application to depositors as to deter them from placing or keeping their funds in national banks. In that case the state brought a statutory proceeding in its courts to compel a national bank to pay over to it an inactive deposit account. The statute required "escheat to the state" of all balances in deposit accounts remaining unclaimed and inactive for more than twenty years, where neither the depositor nor any claimant had filed any notice with the bank showing his present address. It authorized suit in behalf of the state to recover such amounts and directed that judgment should be given for the state "if it be determined that the moneys deposited in any defendant bank or banks are unclaimed", for the period and in the manner specified by the statute. It will be noted that the statute required no proof that the forfeited accounts had been in fact abandoned, or that their owners were unknown or had died without heirs or surviving kin. Upon mere proof of dormancy for the prescribed period, the statute declared the accounts to be escheated to the state.

After pointing out that the state Supreme Court, in sustaining the judgment in the state's favor, had declined, as unnecessary to its decision, to express an opinion whether the absent depositors could reclaim their forfeited deposits from the state, this Court declared that the statute "attempts to qualify in an unusual way agreements between national banks and their customers long understood to arise when the former receive deposits under their plainly granted powers." 262 U. S. at p. 370. And since it was thought that such alterations might be made by that and other states "and, instead of twenty years, varying limitations may be prescribed—three years perhaps, or five, or ten, or fifteen", the Court declared that the effect on the national banking system would be incompatible with the statutory purposes of establishing

a system of national banks acting as federal instrumentalities. That effect it specifically described as follows (p. 370): "The depositors of a national bank often live in many different States and countries; and certainly it would not be an immaterial thing if the deposits of all were subject to seizure by the State where the bank happened to be located. The success of almost all commercial banks depends upon their ability to obtain loans from depositors, and these might well hesitate to subject their funds to possible confiscation".

The unusual alteration of depositors' accounts to which the Court referred was plainly the statutory declaration of escheat of depositors' accounts merely because of their dormancy for the specified period, without any determination of abandonment in fact. This it treated as in effect "confiscation" of depositors' accounts, operating as an effective deterrent to depositors' placing their funds in national banks doing business within the state.

We have no occasion to reconsider this decision, as appellees urge, for the grounds assigned for it are wholly wanting here. While the seizure and escheat or forfeiture for mere dormancy of a national bank account are unusual, the escheat or appropriation by the state of property in fact abandoned or without an owner is, as we have seen, as old as the common law itself. Here there is no escheat or forfeiture by reason of dormancy. Dormancy without more is made the statutory ground for the state's taking inactive bank accounts into its custody, the state assuming the bank's obligation to the depositors. And the deposits need not be surrendered, if the depositors or the bank make it appear that abandonment has not occurred. This is not confiscation or even an attempted deprivation of property. Escheat or forfeiture to the state may follow, but only on proof of abandonment in fact. We cannot say that the protective custody of long inactive bank accounts, for which the Kentucky statute provides, and which in many circumstances may operate for the benefit and security of depositors, see *Provident Savings Institution* v. *Malone*, *supra*, 664, will deter them from placing their funds in national banks in that state. It cannot be said that it would have that effect, more than would the tax laws, the attachment laws, or the laws for the administration of estates of decedents or of missing or unknown persons, which a state may maintain and apply to depositors in national banks.

Nor are we able to discern any greater or different effect so far as prospective depositors in national banks are concerned, from the application of the ancient law of escheat or forfeiture of goods as *bona vacantia*, to bank accounts found to be without an owner, or to have been in fact abandoned by their owners. Compare *United States* v. *Klein*, *supra*. True, under the Kentucky statute, as in the case of an attachment or the administration of the estate of a deceased depositor, a change in the dominion over the accounts will ensue, to which the bank must respond by payment of them on lawful demand. But this, as we have said, is nothing more than performance of a duty by the bank imposed by the federal banking laws, and not a denial of its privileges as a federal instrumentality. In all this we can perceive no denial of constitutional right and no unlawful encroachment on the rights and privileges of national banks.

Since Kentucky may enforce its statute requiring the surrender to it of presumptively abandoned accounts in national as well as state banks, it may, as an appropriate incident to this exercise of authority, require the banks to file reports of inactive accounts, as the statute directs. *Waite* v. *Dowley*, *supra*; *Colorado Bank* v. *Bedford*, 310 U. S. 41, 53.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.